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navigation become feasible for the purposes of transportation, it seems that admiralty jurisdiction should be held to extend to a tort committed by a hydro-air craft upon navigable waters; and, since it has been held that, if a craft is capable of being navigated upon water for the purposes of transportation, it is a subject of admiralty jurisdiction, irrespective of its size, form, capacity, or means of propulsion, in the case of a contract for the provisioning and equipping of a hydro-aeroplane, which was thus engaged, a nice question might be presented to a court of admiralty to determine whether the subject matter of this contract was maritime in its nature. But whatever questions may arise in connection with the use of hydro-aeroplanes, it is clear that in the principal case, no element of jurisdiction was present, and that the maintenance of a libel against the air craft was obviously impossible.

In its opinion in the principal case, the court suggests the possibility of an extension of admiralty jurisdiction through the aid of legislation, but it is clear that any such attempt would raise insurmountable constitutional difficulties. Even though no constitutional question were involved, an extension to aerial navigation of the maritime jurisdiction *in rem* would seem to be a matter of doubtful policy.⁴

The maritime lien, upon which the jurisdiction *in rem* is founded is an outgrowth of the necessities of commerce as carried on during a period when credit facilities and means of communication were little developed. Under such conditions, the ship itself was often the only security available for obtaining credit. But the necessities of commerce demanded that the ship should not be detained, and at the same time, financial considerations required that the ship should serve as security. To satisfy these conflicting demands, a lien divorced from possession was required. Today, though these necessities have to a large extent disappeared, the maritime lien still persists. Since these liens are secret, and are valid as against all the world without the necessity of recordation, it seems that their scope should be strictly limited to cases where the necessities of commerce have called them into existence, and should not be extended into other fields, where no necessity for their allowance exists.

J. D. R.

BILLS AND NOTES: NEGOTIABILITY AS AFFECTED BY PROVISIONS DESIGNED TO ADD SECURITY TO THE INSTRUMENT.—It has been said that a negotiable instrument is a "courier without lug-

⁴ A code drafted by the American Bar Association contains no suggestion of depriving courts of general jurisdiction of control over aerial navigation. This code was not approved by the Association's committee on Jurisprudence and Law Reform, because not relating to a subject of sufficient present importance to warrant federal legislation. (1911), 36 Am. Bar Assn. Rep. 381.

gage", in other words a simple obligation passing freely from hand to hand, unincumbered with collateral agreements. While it is obviously undesirable to burden this courier with the impedimenta of a professional globe-trotter, still the modern commercial world demands a certain freedom in the way of security on such obligations without impairing negotiability. The problem, therefore, is, what amount of hand baggage can this courier carry on his travels? A partial answer to the question is found in the Washington case of *Bright v. Offield*,¹ decided under the Negotiable Instruments Law. In that case a note containing provisions permitting the holder to declare it due on default by the maker in payment of taxes or for any act by him impairing the value of the property mortgaged as security was held non-negotiable. Collateral security and accelerated maturity are permitted by the Negotiable Instruments Law, on the principle that a note payable at all events on a day certain is negotiable, though liable to mature sooner because of some act or default of the maker.² On the other hand a note is uncertain as to time of payment and non-negotiable if the holder may declare it due at his pleasure before its apparent maturity.³ The court interpreted the provision for maturity if the maker should do anything to impair the security as falling within this latter rule.

The provision for accelerated maturity for non-payment of taxes was held to imply a promise to pay the taxes, not only on the land, which the mortgagor was bound to pay and which would not affect the negotiability of the note,⁴ but also on the debt itself, which was held to be a collateral promise, uncertain as to amount and destructive of negotiability. These provisions were here in the note itself. A nicer question arises when they are contained in the mortgage, the note being silent thereon or merely referring to the fact of being secured by mortgage, and not making the mortgage "part of" the note. There are three lines of cases on the subject:

(1) Note and mortgage are construed together, the note being non-negotiable if the mortgage contains any provisions which, if in the note, would destroy negotiability.⁵

(2) Note and mortgage construed together only where the terms of one modify the other. The mortgage is merely security

¹ (Wash., Sept. 15, 1914), 143 Pac. 159.

² *Thorpe v. Mindeman* (1904), 123 Wis. 149, 101 N. W. 417, 68 L. R. A. 146.

³ *Holliday State Bank v. Hoffman* (1911), 85 Kans. 71, 116 Pac. 239, 35 L. R. A. (N. S.) 390.

⁴ *Garnett v. Myers* (1903), 65 Neb. 280, 94 N. W. 803.

⁵ *Brooke v. Struthers* (1896), 110 Mich. 562, 68 N. W. 272, 35 L. R. A. 536; *Roblee v. Union Stockyards Nat. Bank* (1903), 69 Neb. 180, 95 N. W. 61.

and the negotiability of the note is not affected by provisions looking to the preservation of the security alone.⁶

(3) Note and mortgage construed entirely apart. If the note is negotiable in itself it is not affected by any provisions in the mortgage, whether referring to the debt or the security, since they are not made part of the promise but are secured solely by the mortgage lien.⁷

The second class is the more widely followed but the third has the advantage of giving the fullest effect to the two instruments. It is subject to the criticism that instruments executed together are ordinarily to be construed together where the terms of one affect the other. California has even a stricter rule than that of the first class, all notes secured by mortgage, regardless of its terms, being non-negotiable.⁸ In practically all the states the security may be disregarded and suit be brought on the note alone.⁹ California, however, allows but one action on a debt secured by mortgage,¹⁰ a provision which would have to be changed to give full effect to the Negotiable Instruments Law, which will undoubtedly be proposed at the forthcoming session of the legislature. Wherever the note is held negotiable the security, being ancillary to the debt, follows the note free from equities into the hands of a bona fide purchaser,¹¹ thus practically imparting negotiability to an otherwise non-negotiable instrument.

J. S. M., Jr.

CARRIERS: INJURY TO PASSENGER: BURDEN OF PROOF.—In *Steele v. Pacific Electric Railway Company*¹ the plaintiff was injured by falling to the ground while attempting to alight from defendant's car. The instruction to the following effect was held to be error: proof of injury to plaintiff on a car of defendant establishes for the plaintiff a *prima facie* case.

⁶ *Des Moines Sav. Bank v. Arthur* (Iowa, 1913), 143 N. W. 556; *Thorpe v. Mindeman*, *supra*, note 2; *Zollman v. Jackson Trust & Sav. Bank* (Ill., 1909), 32 L. R. A. (N. S.) 858, n.

⁷ *Page v. Ford* (Ore., 1913), 131 Pac. 1013, 45 L. R. A. (N. S.) 247. *Thorpe v. Mindeman*, *supra*, note 2, declined to pass on the question of whether provisions for payment of taxes on the note would render it non-negotiable.

⁸ *Meyer v. Weber* (1901), 133 Cal. 681, 65 Pac. 1110; *National Hardware Co. v. Sherwood* (1913), 165 Cal. 1, 130 Pac. 881.

⁹ *Jones on Mortgages*, § 1220; *Brooke v. Struthers*, *supra*, note 5.

¹⁰ Cal. Code Civ. Proc., § 726; *Meyer v. Weber*, *supra*, note 8. It is doubtful whether this rule applies to other than mortgage security. It does not apply to notes secured by pledge, *Ehrlich v. Ewald* (1884), 66 Cal. 97, 4 Pac. 1062, and it has been suggested that it may not apply to trust deeds, *Herbert Kraft Co. v. Bryan* (1903), 140 Cal. 73, 73 Pac. 745.

¹¹ *Frost v. Fisher* (1899), 13 Colo. App. 322, 58 Pac. 872; *Taylor v. American Nat. Bank* (1912), 63 Fla. 631, 57 So. 678.

¹ (Oct. 1, 1914), 48 Cal. Dec. 254, 143 Pac. 718.